

DEPARTMENT OF PLANNING AND DEVELOPMENT

**CITY OF NEWTON
Massachusetts**

INTER-OFFICE CORRESPONDENCE

DATE: March 5, 2004

TO: Alderman Mansfield, Chairman of the Land Use Committee
Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Steve Gartrell, Assoc. Dir. for Housing and Community Development
Alexandra Ananth, Planner

SUBJECT: Special permit petitions #510-03 & 510-03(2), Otis Development LLC,
391 Walnut Street, Review of petitioner's compliance with the
Inclusionary Zoning Ordinance

As part of special permit petitions #510-03 & 510-03(2), Otis Development LLC (the petitioner) is requesting a change in zone and to convert the existing First Church of Christ Scientist (located at 391 Walnut Street at the corner of Otis Street in Newtonville), into an 11 unit residential building. As the petitioner is requesting a special permit to allow for a density that is greater than what is allowed by right, the project is subject to Newton's Inclusionary Zoning Ordinance. This memorandum reviews the petitioner's compliance with the Ordinance.

Per Section 30-24(f)(3), 15% of the proposed units shall be reserved for sale or rental to Eligible Households (EHs), as defined in the Ordinance. As the petitioner is proposing a total of eleven condominium units, the petitioner has stated that they will be providing two Inclusionary Units (IUs) (units #3 & #6) for sale to EHs in order to meet the 15% requirement.

Unit #3 is located in the northeast corner of the building and is a 3 bedroom, 3 bath, triplex with a gross floor area of 1,476 sq. ft. Unit #6 is located in the northwest corner of the building and is a 2 bedroom, 1½ bath, duplex with a gross floor area of 1,442 sq. ft. Each IU's layout is similar to other Market Rate Units (MRUs) in the proposed development and includes livable basement space as part of the total gross floor area and has access to a private outdoor patio. Like the MRUs, each IU will have one exclusive garage parking space and a second exterior parking space. Both IUs are located at least partially in corner areas of the building, which will allow for additional light exposure.

The petitioner has provided floor plans and unit location plans for both IUs (*SEE "ATTACHMENT A"*). The petitioner has also submitted Preliminary Building Specifications (*SEE "ATTACHMENT*

B”). Preliminary Building Specifications indicate that there will be no distinction between the materials used and the quality of construction for IUs. Finally, the petitioners have submitted square footage information for all units (*SEE “ATTACHMENT C”*).

Based on a review of plans, the Planning and Development Department believes that the proposed IUs meet the Design and Construction Requirements, and the Habitable Space Requirements of Sections 30-24(f)(6) and (f)(7). The proposed IUs are dispersed throughout the development, are sited in no less desirable locations than MRUs, and have exteriors that are indistinguishable in design and materials to the exteriors of MRUs in the development. The total habitable space of IUs meets minimum gross square footage requirements, and the Planning and Development Department believes the bedroom mix of the proposed IUs is equal to the bedroom mix of proposed MRUs.

Section 20-24(f)(8) requires the petitioner to submit an inclusionary housing plan to be reviewed by both the Newton Housing Authority and the Planning and Development Department, and to be certified as compliant by the Planning and Development Department. The petitioner has submitted a draft inclusionary housing plan (the plan) dated March 5, 2004 (*SEE “ATTACHMENT D”*).

The petitioner’s plan includes a marketing and lottery-based resident selection plan that appears to meet the intent of the Ordinance. The petitioner is proposing that one unit be allocated to a Local Preference selection pool, and that one unit be expanded to include a General Preference selection pool, as required by fair housing laws. The petitioner will be responsible for the marketing of the proposed IUs, identifying EHs, and awarding the units through a lottery process. The Planning and Development Department shall oversee and insure the petitioner’s compliance with the Ordinance. Additionally, the petitioner will execute and record a covenant in favor of the City, in a form to be approved by the City Solicitor, which shall limit initial sale and subsequent re-sales of IUs to EHs.

The Planning and Development Department offers the following comments on the petitioner’s proposed inclusionary housing plan:

- The plan states that interested buyers will be asked to complete an application approved by the Planning and Development Department, however, no application is included in the petitioner’s plan. *This application must be submitted to the Planning and Development Department prior to the issuance of a building permit.*
- The plan states that in the event of violations or deficiencies in the execution of the plan, the Planning and Development Department may withhold recommending an occupancy permit for all units until all violations or deficiencies have been cured. *The Planning and Development Department recommends that a Certificate of Occupancy for one MRU be withheld for each IU, until purchased by an EH. Additionally, we recommend that in the event that no EHs are identified in either the initial lottery process or any subsequent re-sale, the City shall have the right of first refusal to purchase the units at a cost affordable to a household earning 70% of medium income for households in Newton’s defined Metropolitan Statistical Area, assuming 1.5 persons per bedroom.*

- Section 30-24(f)(1)(ii) determines the cost of the IUs and requires that for IUs sold to EHs, the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium fees, and insurance shall not exceed 33% of the monthly income of an EH assuming 1.5 persons per bedroom. *Though the developer has provided a list of projected unit sales prices (SEE “ATTACHMENT E”), the petitioner should include assumptions used to develop the projected prices of the IUs in accordance with this formula. This should give a sense to applicants of what the final “true costs” of the IU will be. Additionally, the Planning and Development Department recommends the petitioner develop an estimated cost of monthly utility payments for the information of potential buyers.*
- The Housing Authority has requested that a fee of \$1,250 be paid by the applicant to the Housing Authority to cover the cost of printing and distributing marketing information to its tenants. *This should be incorporated into the petitioner’s plan.*
- The Planning and Development Department notes that the petitioner’s plan does not include a plan to cover the monitoring of the initial lottery process or any subsequent re-sales. *We believe an experienced monitoring agent should be identified by the petitioner and approved by the Planning and Development Department to monitor (at the petitioner’s expense) and oversee both the initial lottery process and any subsequent re-sales in a procedure similar to MassHousing’s non-governmental 40B process. Under the 40B process, for any re-sale of IUs, the seller would be charged 2.5% of the sales price to cover the cost of the marketing and re-sale process to EHs. However, the seller could apply to the City’s Housing Office for assistance in the case of demonstrated financial need. Alternatively, the Planning and Development Department may enter into an agreement with the petitioner to provide some or all of these services. Both the Planning and Development Department and Law Department must approve the monitoring service agreement.*
- The Planning and Development Department recommends that we, in addition to the Law Department, review and approve the restrictive covenant required in (f)(8)(e)(i). *This should be incorporated into the petitioner’s plan*
- The Planning and Development Department believes that all applicants determined not eligible must be notified by the developer of their status prior to the lottery process. *This should be incorporated into the petitioner’s plan*

Based on the above comments, the Planning and Development Department believes the petitioner should submit a revised inclusionary housing plan to the Planning and Development Department for review and certification of compliance prior to being scheduled for a Working Session.